

ASSEMBLY BILL

No. 2127

**Introduced by Assembly Member Benoit
(Coauthor: Assembly Member Smyth)**

February 20, 2008

An act to amend Sections 511 and 515 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2127, as introduced, Benoit. Employment: alternative workweek schedules: small business option.

Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law authorizes the adoption by $\frac{2}{3}$ of employees in a work unit of alternative workweek schedules providing for workdays no longer than 10 hours within a 40-hour workweek.

This bill would authorize an individual employee employed by an employer with 25 or fewer employees to request a work schedule of up to 10 hours per day within a 40-hour workweek, and would authorize an employer to implement this schedule without any obligation to pay overtime compensation for hours worked as part of the schedule. The employee would be required to request the specific schedule desired in writing and if the employer agrees to that schedule, the employer and the employee would be required to execute a written agreement memorializing that schedule. The employee or employer would be authorized to terminate the agreement with written notice at least 7 days in advance of the desired termination date. The employer would be

required to maintain the agreement as a record for 3 years after the termination of the agreement.

This bill also would make conforming and technical changes to related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 511 of the Labor Code is amended to
2 read:

3 511. (a) Upon the proposal of an employer, the employees of
4 an employer may adopt a regularly scheduled alternative workweek
5 that authorizes work by the affected employees for no longer than
6 10 hours per day within a 40-hour workweek without the payment
7 to the affected employees of an overtime rate of compensation
8 pursuant to this section. A proposal to adopt an alternative
9 workweek schedule shall be deemed adopted only if it receives
10 approval in a secret ballot election by at least two-thirds of affected
11 employees in a work unit. The regularly scheduled alternative
12 workweek proposed by an employer for adoption by employees
13 may be a single work schedule that would become the standard
14 schedule for workers in the work unit, or a menu of work schedule
15 options, from which each employee in the unit would be entitled
16 to choose.

17 (b) *This shall be known as the “Small Business Family*
18 *Scheduling Option.” Notwithstanding subdivision (a), an employer*
19 *with 25 or fewer employees may approve a written request of an*
20 *employee to work an alternative workweek schedule for no longer*
21 *than 10 hours per day within a 40-hour workweek without the*
22 *payment to the affected employee of an overtime rate of*
23 *compensation pursuant to this section. An employee shall provide*
24 *a voluntary, signed written request that includes the start date of*
25 *the alternative workweek schedule and the days and the number*
26 *of hours per day for the alternative workweek schedule. If agreed,*
27 *the employer and employee shall execute a written agreement that*
28 *includes the start date of the alternative workweek schedule and*
29 *the days and the number of hours per day for the alternative*
30 *workweek schedule. The employer shall maintain the written*
31 *agreement as a record for three years beyond the termination of*

1 *the alternative workweek agreement. The employee or employer*
2 *may terminate the agreement at any time upon seven days' advance*
3 *written notice.*

4 ~~(b)~~

5 (c) An affected employee working longer than eight hours but
6 not more than 12 hours in a day pursuant to an alternative
7 workweek schedule adopted pursuant to this section shall be paid
8 an overtime rate of compensation of no less than one and one-half
9 times the regular rate of pay of the employee for any work in excess
10 of the regularly scheduled hours established by the alternative
11 workweek agreement and for any work in excess of 40 hours per
12 week. An overtime rate of compensation of no less than double
13 the regular rate of pay of the employee shall be paid for any work
14 in excess of 12 hours per day and for any work in excess of eight
15 hours on those days worked beyond the regularly scheduled
16 workdays established by the alternative workweek agreement.
17 Nothing in this section requires an employer to combine more than
18 one rate of overtime compensation in order to calculate the amount
19 to be paid to an employee for any hour of overtime work.

20 ~~(e)~~

21 (d) An employer shall not reduce an employee's regular rate of
22 hourly pay as a result of the adoption, repeal, *termination*, or
23 nullification of an alternative workweek schedule.

24 ~~(d)~~

25 (e) An employer shall make a reasonable effort to find a work
26 schedule not to exceed eight hours in a workday, in order to
27 accommodate any affected employee who was eligible to vote in
28 an election authorized by ~~this section~~ *subdivision (a)* and who is
29 unable to work the alternative schedule hours established as the
30 result of that election. An employer shall be permitted to provide
31 a work schedule not to exceed eight hours in a workday to
32 accommodate any employee who was hired after the date of the
33 election and who is unable to work the alternative schedule
34 established as the result of that election. An employer shall explore
35 any available reasonable alternative means of accommodating the
36 religious belief or observance of an affected employee that conflicts
37 with an adopted alternative workweek schedule, in the manner
38 provided by subdivision (j) of Section 12940 of the Government
39 Code.

40 ~~(e)~~

1 (f) The results of any election conducted pursuant to this section
2 shall be reported by an employer to the Division of Labor Statistics
3 and Research within 30 days after the results are final.

4 ~~(f)~~

5 (g) Any type of alternative workweek schedule that is authorized
6 by this code and that was in effect on January 1, 2000, may be
7 repealed by the affected employees pursuant to this section. Any
8 alternative workweek schedule that was adopted pursuant to Wage
9 Order Numbers 1, 4, 5, 7, or 9 of the Industrial Welfare
10 Commission is null and void, except for an alternative workweek
11 providing for a regular schedule of no more than 10 hours' work
12 in a workday that was adopted by a two-thirds vote of affected
13 employees in a secret ballot election pursuant to wage orders of
14 the Industrial Welfare Commission in effect prior to 1998. This
15 subdivision does not apply to exemptions authorized pursuant to
16 Section 515.

17 ~~(g)~~

18 (h) Notwithstanding subdivision ~~(f)~~ (g), an alternative workweek
19 schedule in the health care industry adopted by a two-thirds vote
20 of affected employees in a secret ballot election pursuant to Wage
21 Orders 4 and 5 in effect prior to 1998 that provided for workdays
22 exceeding 10 hours but not exceeding 12 hours in a day without
23 the payment of overtime compensation shall be valid until July 1,
24 2000. An employer in the health care industry shall make a
25 reasonable effort to accommodate any employee in the health care
26 industry who is unable to work the alternative schedule established
27 as the result of a valid election held in accordance with provisions
28 of Wage Orders 4 or 5 that were in effect prior to 1998.

29 ~~(h)~~

30 (i) Notwithstanding subdivision ~~(f)~~ (g), if an employee is
31 voluntarily working an alternative workweek schedule providing
32 for a regular work schedule of not more than 10 hours work in a
33 workday as of July 1, 1999, an employee may continue to work
34 that alternative workweek schedule without the entitlement of the
35 payment of daily overtime compensation for the hours provided
36 in that schedule if the employer approves a written request of the
37 employee to work that schedule.

38 SEC. 2. Section 515 of the Labor Code is amended to read:

39 515. (a) The Industrial Welfare Commission may establish
40 exemptions from the requirement that an overtime rate of

1 compensation be paid pursuant to Sections 510 and 511 for
2 executive, administrative, and professional employees, provided
3 that the employee is primarily engaged in the duties that meet the
4 test of the exemption, customarily and regularly exercises
5 discretion and independent judgment in performing those duties,
6 and earns a monthly salary equivalent to no less than two times
7 the state minimum wage for full-time employment. The
8 commission shall conduct a review of the duties that meet the test
9 of the exemption. The commission may, based upon this review,
10 convene a public hearing to adopt or modify regulations at that
11 hearing pertaining to duties that meet the test of the exemption
12 without convening wage boards. Any hearing conducted pursuant
13 to this subdivision shall be concluded not later than July 1, 2000.

14 ~~(b) (1) The commission may establish additional exemptions~~
15 ~~to hours of work requirements under this division where it finds~~
16 ~~that hours or conditions of labor may be prejudicial to the health~~
17 ~~or welfare of employees in any occupation, trade, or industry. This~~
18 ~~paragraph shall become inoperative on January 1, 2005.~~

19 ~~(2) Except as otherwise provided in this section and in~~
20 ~~subdivision (g) (h) of Section 511, nothing in this section requires~~
21 ~~the commission to alter any exemption from provisions regulating~~
22 ~~hours of work that was contained in any valid wage order in effect~~
23 ~~in 1997. Except as otherwise provided in this division, the~~
24 ~~commission may review, retain, or eliminate any exemption from~~
25 ~~provisions regulating hours of work that was contained in any valid~~
26 ~~wage order in effect in 1997.~~

27 (c) For the purposes of this section, “full-time employment”
28 means employment in which an employee is employed for 40 hours
29 per week.

30 (d) For the purpose of computing the overtime rate of
31 compensation required to be paid to a nonexempt full-time salaried
32 employee, the employee’s regular hourly rate shall be $\frac{1}{40}$ th of the
33 employee’s weekly salary.

34 (e) For the purposes of this section, “primarily” means more
35 than one-half of the employee’s worktime.

36 (f) (1) In addition to the requirements of subdivision (a),
37 registered nurses employed to engage in the practice of nursing
38 shall not be exempted from coverage under any part of the orders
39 of the Industrial Welfare Commission, unless they individually

1 meet the criteria for exemptions established for executive or
2 administrative employees.

3 (2) This subdivision does not apply to any of the following:

4 (A) A certified nurse midwife who is primarily engaged in
5 performing duties for which certification is required pursuant to
6 Article 2.5 (commencing with Section 2746) of Chapter 6 of
7 Division 2 of the Business and Professions Code.

8 (B) A certified nurse anesthetist who is primarily engaged in
9 performing duties for which certification is required pursuant to
10 Article 7 (commencing with Section 2825) of Chapter 6 of Division
11 2 of the Business and Professions Code.

12 (C) A certified nurse practitioner who is primarily engaged in
13 performing duties for which certification is required pursuant to
14 Article 8 (commencing with Section 2834) of Chapter 6 of Division
15 2 of the Business and Professions Code.

16 (D) Nothing in this paragraph shall exempt the occupations set
17 forth in subparagraphs (A), (B), and (C) from meeting the
18 requirements of subdivision (a).